

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WILL MORAN

Involving certain employees of:

CHIMACUM SCHOOL DISTRICT

CASE 128260-E-16

DECISION 12623 - PECB

DIRECTION OF ELECTION

Will Moran, the decertification petitioner.

Curtis M. Leonard and Charles W. Lind, Attorneys at Law, Patterson Buchanan Fobes & Leitch Inc. P.S., for the Chimacum School District.

Thomas A. Leahy, Attorney at Law, Reid, McCarthy, Ballew & Leahy, L.L.P., for Teamsters Local 589.

On June 15, 2016, Will Moran filed a petition to decertify Teamsters Local 589 (union) as the exclusive bargaining representative of a bargaining unit of bus drivers and dispatchers at the Chimacum School District (employer). The issue in this case is whether Moran's petition is timely.

The employer and union's most recent collective bargaining agreement expired on August 31, 2015. The union and employer argue that Moran's petition is not timely because a contract bar was in place when the petition was filed. To support this argument, they assert that they reached a tentative agreement for a successor agreement on May 13, 2016—before Moran filed his petition—and both the employer and union subsequently ratified the tentative agreement. Moran claims his petition is timely because the employer and union had not completed the ratification process when he filed his petition and therefore no contract bar was in place.

Because the parties disagreed about the timing of events leading up to the filing of Moran's petition, the union requested that this agency hold a hearing to gather facts and evidence. That

request was granted and Hearing Officer Dario de la Rosa conducted a hearing on September 1, 2016. The parties filed post-hearing briefs to support their legal positions.¹

Moran's petition is timely. Although the employer and union reached a tentative agreement on May 13, 2016, that agreement did not create a contract bar because the agreement was contingent on ratification. Both the employer and union did not complete the ratification process before the petition was filed. This matter is remanded to the Representation Case Administrator to conduct an election.

BACKGROUND

The union represents a bargaining unit of bus drivers and dispatchers in the employer's workforce. *Chimacum School District*, Decision 9141 (PECB, 2005). The employer and union were parties to a collective bargaining agreement that expired on August 31, 2015. The employer and union reached a tentative agreement for a successor agreement on two different occasions, but the union's membership voted against ratifying the proposed contracts. The employer and union were ultimately unable to reach settlement for a successor agreement before the agreement expired.

On March 3, 2016, the employer and union jointly requested mediation services from this agency. The employer and union met with an agency mediator in April and May and reached a tentative agreement for a successor contract on May 13, 2016. Neither the employer nor the union signed the tentative agreement.

The union held the contract ratification vote for its members on June 15, 2016. The contract ratification process began at about 12:00 p.m. Moran hand delivered a copy of his petition to Daniel Taylor, the union's president and business representative, at 1:00 p.m. while the ratification vote was being conducted. Voting ended at approximately 2:00 p.m. and ballots were tallied immediately thereafter. The membership voted in favor of the tentative agreement. The union

¹ On September 16, 2016, Moran filed a motion to supplement the record. The union opposed the motion. The employer did not take a position. It is unnecessary to rule on Moran's request based upon the disposition of this decision.

immediately notified the employer of the outcome. The employer scheduled its ratification vote for June 22, 2016, and the school board ratified the agreement on that date.

When Moran served the union with a copy of his petition on June 15, 2016, he had neither placed the petition in the mail to this agency nor served a copy of the petition on the employer. Moran mailed his petition to this agency by certified mail at approximately 4:30 p.m. on June 15, 2016. Although statements attached to Moran's petition claimed that he served both the employer and union on June 15, 2016, he admitted that he actually did not serve the employer until the next day, June 16, 2016.

DISCUSSION

Applicable Legal Standards

One of the pillars of the collective bargaining laws administered by this agency, including Chapter 41.56 RCW, is ensuring the right of public employees to choose whether to organize and be represented for the purpose of collective bargaining. Another central theme in these laws is the concern and desire for stable and harmonious labor relations. Thus, certain limitations are placed on when representation petitions may be filed.

The limitation at issue in this case is the contract bar. A contract bar precludes any representation petition from being filed during the life of a valid collective bargaining agreement except during a certain statutory window period.² WAC 391-25-030(1).

The contract bar rule and the principles surrounding the bar are set forth in WAC 391-25-030(1). To constitute a valid agreement that would create a contract bar, the agreement must cover an appropriate bargaining unit, must be in writing and signed by the parties' representatives, and must contain a fixed expiration date not less than 90 days after the agreement was signed. WAC 391-25-030(1)(a). However, this agency has not required a final executed document before

² See, e.g., RCW 41.56.070 (a petition to change or remove the incumbent bargaining representative may be filed "not more than ninety nor less than sixty days prior to the expiration date of the agreement").

applying a contract bar. In order to better understand this agency's contract bar principles, a review of the existing precedent on the subject is necessary.

In *City of Port Orchard*, Decision 483 (PECB, 1978), the employer and incumbent union reached a tentative agreement on a new collective bargaining agreement on March 1. A competing labor organization filed a change of representation petition on March 2. In its initial response to this agency on March 10, the employer provided the bargaining history and noted that as of that date the union had ratified the agreement and the agreement was in the employer's hands for signature. The parties signed the agreement on March 13.

In response to the incumbent union's motion to dismiss, the executive director commented that this agency's contract bar rules were similar to the rules followed by the National Labor Relations Board (NLRB) with the NLRB not honoring oral agreements. In denying the incumbent union's motion to dismiss, the executive director relied upon the holding of the Washington State Supreme Court in *State ex rel. Bain v. Clallam County*, 77 Wn.2d 542, 545 (1970), to require collective bargaining agreements to be written and executed in order to be effective. The executive director declined to invoke the contract bar rule because the parties only had a conditional, unsigned offer at the time the competing labor organization filed its change of representation petition. *City of Port Orchard*, Decision 483.

Although ratification was not discussed directly in *City of Port Orchard*, subsequent decisions have applied that decision in a manner requiring parties to have completed any ratification procedures. In *Kennewick School District*, Decision 1950 (PECB, 1984), the parties reached a tentative agreement for a successor agreement on October 21 that was subject to ratification by both parties. A competing labor organization filed its petition to change the representative for the bargaining unit on November 7. The union ratified the agreement on November 9, and the employer ratified the agreement on November 22. The executive director declined to find a contract bar because neither party had ratified the tentative agreement by the date that the competing representation petition was filed. The executive director stated, "In the absence of completion of all ratification procedures reserved by the parties, a tentative agreement reached at the bargaining table does not bar the processing of a representation petition." *Id.*

In *West Valley School District*, Decision 2913 (PECB, 1988), the parties agreed to a 61-day contract extension while negotiating a successor collective bargaining agreement. A change of representation petition was filed during the extension period. On the same day the petition was filed, the parties reached a tentative agreement on a successor collective bargaining agreement. That agreement was ratified by the union two days later. The employer had not ratified the agreement by the time the matter went to hearing.

In discussing whether there was a contract bar, the executive director commented on the role of ratification. With respect to the employer, the executive director opined that “[i]nherent in the holding of [*State ex rel. Bain v. Clallam County*, 77 Wn.2d 542] is that a public employer . . . must comply with the requirements of the open public meeting law when entering into a labor contract.” *West Valley School District*, Decision 2913. With respect to the union, the executive director stated that the obligation to ratify stems from custom or the organization’s constitution, bylaws, or member actions. The executive director characterized agency precedent as not applying a contract bar where compliance with normal ratification procedures has not occurred.³

In *Port of Seattle*, Decision 3247 (PECB, 1989), the executive director said that for a contract bar to exist, “the employer must have come to an agreement with the incumbent exclusive bargaining representative of its employees, and both parties to the negotiations must have completed their customary ratification processes.” He further stated, “A tentative agreement is not a bar . . . even when ratified by one of the parties” *Id.*, citing *Kennewick School District*, Decision 1950, and *City of Port Orchard*, Decision 483.

Ratification, while not called out in the rule, appears to be required because once the agreement has been ratified by both parties all lawful preconditions have been met and the parties are obligated to sign the agreement.⁴ In *Chelan-Douglas Public Transportation Benefit Area (Link Transit)*, Decision 5136 (PECB, 1995), a decertification petition was filed after the parties ratified

³ The Commission affirmed the executive director’s decision on other grounds. *West Valley School District*, Decision 2913-B (PECB, 1988).

⁴ The rule or cases do not impose an obligation upon the union to take a ratification vote. Rather, union ratification becomes a precondition if called for by the union’s bylaws, constitution, practice, or pronouncements that it would conduct a ratification vote.

their tentative agreement but before final execution of the completed contract. The executive director applied the contract bar on the grounds that ratification by both parties had occurred, triggering a duty to sign the contract because all lawful preconditions had been met.

The only outlier in agency decisions with respect to the question of ratification is *Clark County*, Decision 8347 (PECB, 2004). That decision presents some unique facts. A public employer merged with Clark County and became a department of Clark County. A collective bargaining agreement covered the employees of the former public employer at the time of the merger. Clark County and the union agreed that the terms and conditions of that agreement would continue following the merger. A change of representation petition was filed by a competing labor organization while the agreement was still in effect and before the window period opened. The parties had also tentatively agreed to a successor agreement with the union having ratified the same by the date the petition was filed.

The executive director's designee held that the first collective bargaining agreement operated as a contract bar to the petition. The executive director's designee also held that the successor agreement that had been ratified by the union also operated as a contract bar to the petition. The designee held that the employer was obligated to sign the agreement following the union's ratification, and allowing a third party to intervene in the ratification process would be contrary to harmonious and stable labor relations.

The Commission has not squarely addressed this issue. In *King County Housing Authority*, Decision 11631-A (PECB, 2013), the Commission affirmed the dismissal of a contract bar argument. However, the Commission did not "reach the issue of whether the *West Valley School District* ratification test is valid." The Commission referred to the ratification test stated in *West Valley School District* as dicta. *King County Housing Authority*, Decision 11631-A.

Application of Standards

The union and employer argue that the decision in *Clark County*, Decision 8347, is directly applicable. Applying that decision, the union and employer argue that a contract bar was in place because there was a tentative agreement ratified by the union which the employer was obligated

to sign. Both argue that the policy of encouraging stable and harmonious labor relations should prevail in this instance.

There was not a contract bar in this instance, so the petition is timely. Agency precedent has consistently interpreted the contract bar principle as requiring both parties to have completed any necessary ratification procedures. Agency decisions have also consistently refused to find a contract bar when only the union but not the employer has ratified.

Agency precedent construes ratification as the last precondition to be met before the parties are obligated to sign an agreement. While the Commission in *King County Housing Authority*, Decision 11631-A, did not reach the question of ratification in interpreting the contract bar and referred to the executive director's analysis on the same as dicta, it did not articulate any other standard. The Commission did not signal an interpretation of the contract bar rule requiring a completed and executed final agreement. The Commission also did not indicate a standard more similar to the NLRB's where a signed tentative agreement is sufficient for a contract bar and ratification is only necessary if called for in the agreement. *See, e.g., Appalachian Shale Products Co.*, 121 NLRB 1160 (1958) (signed informal documents may serve as a contract bar). Finally, the Commission did not signal accord with the executive director's designee in *Clark County*, Decision 8347.

The exasperation of the union and employer given the arduous path in this case to a tentative agreement is to be expected. The facts of this case do present a clash of two core principles presented by the collective bargaining laws administered by this agency: the right of public employees to choose whether to organize and be represented for the purpose of collective bargaining and the concern and desire for stable and harmonious labor relations. This agency has consistently utilized a contract's ratification status in determining whether there is an effective collective bargaining agreement that constitutes a contract bar to a petition. That history cannot be ignored at this juncture of the proceedings.

In this instance, the petition was served on the union as it was in the midst of its ratification vote. Moran did not complete service until the day after he filed the petition. However, it is not

necessary to determine whether Moran's failure to complete service until the next day resulted in the union ratifying the agreement before the petition was filed. The employer did not ratify the agreement until six days after filing and service of the petition was completed.

The union suggests that once it ratified the agreement a contract bar was in place because the employer was obligated to sign the agreement at that point.⁵ In this instance, the superintendent for the employer testified about the employer's ratification. He stated, "I would not take [the tentative agreement] to the board prior to the membership, quote unquote, ratifying it . . . because our board would do that in open session."⁶ When asked if he had any concerns that the board would not approve the agreement, the superintendent said, "[I]n my role, a person sometimes should have some understanding on where a board falls, and until it's a public vote, to be quite humble and honest, you never quite know."⁷

The superintendent's testimony indicates that one cannot conclude, as the union asserts, that all lawful preconditions had been met and that there was a collective bargaining agreement in effect when the petition was filed. This case is not factually distinguishable from any other instance where this agency has refused to apply a contract bar because a tentative agreement had not been ratified by both the union and employer. Accordingly, a contract bar was not in place and the petition is timely.

Conclusion

The petition is timely. There was not a contract bar in place when the petition was filed. The matter is remanded to the Representation Case Administrator to conduct an election.

⁵ Obligating an employer to sign an agreement for purposes of a contract bar is different than analyzing whether an employer's failure to ratify an agreement constitutes bad faith. *Naches Valley School District*, Decision 2516 (EDUC, 1987). In an unfair labor practice case where bad faith is alleged, the analysis will assess whether an employer has acted in bad faith. If so, the appropriate remedy may be to require the employer to sign the agreement.

⁶ Tr. 90:1-3.

⁷ Tr. 90:17-20.

FINDINGS OF FACT

1. The Chimacum School District is a public employer within the meaning of RCW 41.56.030(12).
2. Teamsters Local 589 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a bargaining unit of bus drivers and dispatchers in the employer's workforce.
4. The employer and union were parties to a collective bargaining agreement that expired on August 31, 2015.
5. On March 3, 2016, the employer and union jointly requested mediation services from this agency. The employer and union met with an agency mediator in April and May and reached a tentative agreement for a successor contract on May 13, 2016.
6. The union held the contract ratification vote for its members on June 15, 2016.
7. The union started the contract ratification process at about 12:00 p.m. on June 15, 2016.
8. Moran hand delivered a copy of his petition to decertify the union as the exclusive bargaining representative of the bargaining unit to Daniel Taylor, the union's president and business representative, at 1:00 p.m. while the ratification vote was being conducted. Voting ended at approximately 2:00 p.m. and ballots were tallied immediately thereafter.
9. The union's membership voted in favor of the tentative agreement. The union immediately notified the employer of the outcome.

10. Moran mailed his petition to this agency by certified mail at approximately 4:30 p.m. on June 15, 2016. Moran did not serve the employer with a copy of the petition until the next day, June 16, 2016.
11. The employer scheduled its ratification vote for June 22, 2016, and the school board ratified the agreement on that date.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.
2. Based upon Findings of Fact 5 through 11, the employer and union did not have a valid collective bargaining agreement that would serve as a contract bar under WAC 391-25-030(1).

ORDER

This matter is remanded to the Representation Case Administrator for further processing consistent with this decision.

ISSUED at Olympia, Washington, this 19th day of October, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-590.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 10/19/2016

DECISION 12623 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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